DO NOT REMOVE EXAM FROM EXAM ROOM

EXAMINATION NUMBER (REQUIRED) _____

Franklin Pierce Law Center
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Professor Jon M. Garon
Final Examination

Exam Instructions:

You have three hours to complete the examination. Remember to answer the questions as they are presented, including related issues, but not to answer questions which are not asked. **You may use any books or written materials you have brought with you into the examination, but you may not use the materials brought by any other student.**

The test consists of two parts. Part I is a series of multiple choice questions. Please provide the best answer for each question. Part I represents approximately 1/3 the final examination score (which is the equivalent of 1/4 the course grade).

Part II is an essay examination consisting of two fact patterns, with multiple questions associated with the first fact pattern. Part II represents approximately 2/3 the final examination score (which is the equivalent of 1/2 the course grade).

Please apply only the law of the United States Copyright Act 17 U.S.C. §101 et. seq. (2003).

You may not take the copy of the examination out of the examination room. Unlike the quizzes, I do not release the questions used on the final examination. For your convenience, a copy of the final essay question and an outline of the analysis will be posted to the TWEN course website following the examination period.

Good Luck.

Instructions for Part I

Use the Scantron answer sheet provided to you to answer the questions for Part I (questions 1-35). Please completely fill in the bubble that you believe corresponds to the best choice. Use only a No. 2 pencil to fill in the bubbles. Make no stray marks. Erase completely. Incomplete erasures and stray marks may be counted as incorrect responses by the grading machine. No person will check this for you. This is your responsibility.

Part II. Please write legibly, skipping every other line and writing on only one side of the page in the bluebook. Failure to follow this instruction will result in the loss of points!

You may use as many bluebooks as you require. Please number the answers to correspond with the questions presented below. **Take time to organize and outline your answer before you begin writing.**

Note: For your analysis, please do not discuss any potential claims arising under trademark law or state laws such as publicity rights.

Question 1:

In 1865, Charles Dodgson wrote the book *Alice's Adventures in Wonderland* under the pseudonym Lewis Carroll. His sequel *Alice Through the Looking-Glass* appeared in 1872. The stories of Alice, the Mad Hatter, the Cheshire Cat and others have been translated into numerous languages. Both Lewis Carroll books have long been part of the public domain.

In 1998, Claire Hobson wrote and published an original story entitled *Return to Wonderland.* The book was a fantastical story involving a woman who believed she was the adult Alice (although the story is intentionally unclear whether the woman is Alice or a person psychologically deluded into thinking she is Alice). Alice again encounters many of the same characters, although since she is an adult, the situations are more fantastic and dangerous. Hobson's book was a bestseller, widely available in bookstores.

In the original story, Alice is arrested by the Queen of Hearts, who orders "off with her head" but the Queen's order is never carried out. In the climax of Hobson's book, Alice is captured by the Jack of Hearts. She is then rescued by the King of Spades. The King invites Alice to become the Queen of Spades. Alice tries to reject the King's offer, but he beheads the existing Queen of Spades so that Alice can take the place of the former Queen and rule Wonderland. Alice runs from the King only to fall through a rabbit hole and reappear in the real world. She awakens in her own bed, confused and holding a deck of cards. The Queen of Spades is ripped in two. She returns to Wonderland through her bedroom mirror with the card deck in hand – including a repaired Queen of Spades – and destroys all the kings in the deck by lighting each on fire. The book ends with Alice hosting a croquet game for the Queens and the number cards of all suits. Among those at the croquet game are four child-kings (one of each suit), each looking like Alice and all holding her hand.

In 2002, Jones Cariah produced and directed a music video for his song "Joker's Wild." Mr. Cariah performs under the name "The Joker." In the music video, he shows pictures from the original illustrations of *Alice's Adventures in Wonderland* (by John Tenniel) which come to life and dance with Cariah on stage. As the video continues, the Joker begins to joust with the Jack's to save Alice (as drawn by Tenniel). As in Hobson's book, Alice sets fire to the kings and then goes to play croquet. Alice and the Joker then dance together. The video fades out with a still image of a family portrait which features Alice, the Joker, and four child-kings (one of each suit), which look like Alice and the Joker.

The copyright in Hobson's book had been purchased by Fantasy Films, Inc. for purposes of adapting the book into a movie. Hobson was paid $50,000 for the rights to the book. The contract provided that upon the public release of the film, Fantasy Films would pay Hobson an additional $200,000. Hobson has come to you for advice. She hopes to bring a copyright infringement action against Cariah.

(As additional information, excerpts from Carroll's *Alice's Adventures in Wonderland* are attached as an appendix to the question on pages 12-14, below.)

a. Explain to Hobson whether she has standing to bring the copyright action against Cariah.

For the remaining parts of the question, assume that both Hobson and Fantasy Films, Inc. joined in the lawsuit (collectively "Plaintiffs").

b. Explain to Hobson the most likely case Plaintiffs would bring against Cariah, including any limitations or difficulties in the case and the likely outcome of the case in chief.

c. Explain to Hobson the most likely defenses Cariah would raise, including any limitations or difficulties in the defense and the likely effectiveness of the defense.

d. Assuming that Plaintiffs can successfully establish copyright infringement, explain the possible remedies available to each Plaintiff.

Question 2:

Congress is considering enacting a new bill entitled "Fair Music Restoration Act" under which the personal copying of phonograms which have been lawfully purchased by the consumer may be recorded on any digital medium. For digital recording media such as blank CD-ROMs and recordable DVDs, manufacturers would pay a tax of $0.002 (2/10ths of one cent) for each megabyte of storage. The rate would double for reusable media such as computer hard drives. The Copyright Office would distribute this money in a manner similar to that which it currently uses for digital audiotape royalties. In addition, a fee of $15.00 would be charged for each CD-ROM writers (or burners) sold if such writer could be used to create the copies.

A second section of the bill provides that DVD writers (or burners) can be sold as part of computers only with the payment of $100 per writer. Congress has found that DVD writers are primarily used to copy motion pictures distributed on DVDs. These funds would go to a development fund for new filmmakers managed by the U.S. National Endowment of the Humanities, a federal agency. A tax of $2.00 would be charged for each blank DVD.

Assume you work for a congressman asked about the bill. Explain what the bill is intended to accomplish and whether you believe it is good policy. Explain the reasons for your decision in detail, distinguishing between the music provisions and the DVD provisions for film if relevant.

END OF PART II

Appendix: Alice's Adventures in Wonderland

By Lewis Carroll, Chapters 8, 11 (excerpts)

A LARGE rose-tree stood near the entrance of the garden: the roses growing on it were white, but there were three gardeners at it, busily painting them red. Alice thought this a very curious thing, and she went nearer to watch them, and just as she came up to them she heard one of them say, "Look out now, Five! Don't go splashing paint over me like that!"

"I couldn't help it," said Five, in a sulky tone. "Seven jogged my elbow."

On which Seven looked up and said, "That's right, Five! Always lay the blame on others!

"*You'd* better not talk!" said Five. "I heard the Queen say only yesterday you deserved to be beheaded!"

"What for?" said the one who had spoken first.



"That's none of *your* business, Two!" said Seven.

"Yes, it *is* his business!" said Five. "and I'll tell him -- it was for bringing the cook tulip-roots instead of onions."

Seven flung down his brush, and had just begun, "Well, of all the unjust things -- -" when his eye chanced to fall upon Alice, as she stood watching them, and he checked himself suddenly: the others looked round also, and all of them bowed low.

"Would you tell me," said Alice, a little timidly, "why you are painting those roses?"

Five and Seven said nothing, but looked at Two. Two began in a low voice, "Why, the fact is, you see, Miss, this here ought to have been a *red* rose-tree, and we put a white one in by mistake, and if the Queen was to find it out, we should all have our heads cut off, you know. So you see, Miss, we're doing our best, afore she comes, to -- -" At this moment Five, who had been anxiously looking across the garden, called out, "The Queen! The Queen!" and the three gardeners instantly threw themselves flat upon their faces. There was a sound of many footsteps, and Alice looked round, eager to see the Queen.

First came ten soldiers carrying clubs; these were all shaped like the three gardeners, oblong and flat, with their hands and feet at the corners: next the ten courtiers; these were ornamented all over with diamonds, and walked two and two, as the soldiers did. After these came the royal children; there were ten of them, and the little dears came jumping merrily along hand in hand, in couples: they were all ornamented with hearts. Next came the guests, mostly Kings and Queens, and among them Alice recognised the White Rabbit: it was talking in a hurried, nervous manner, smiling at everything that was said, and went by without noticing her. Then followed the Knave of Hearts, carrying the King's crown on a crimson velvet cushion; and, last of all this grand procession, came THE KING AND QUEEN OF HEARTS.

Alice was rather doubtful whether she ought not to lie down on her face like the three gardeners, but she could not remember ever having heard of such a rule at processions; "and besides, what would be the use of a procession," thought she, "if people had all to lie down upon their faces, so that they couldn't see it?" So she stood still where she was, and waited.

When the procession came opposite to Alice, they all stopped and looked at her, and the Queen said severely, "Who is this?" She said it to the Knave of Hearts, who only bowed and smiled in reply.

"Idiot!" said the Queen, tossing her head impatiently; and, turning to Alice, she went on, "What's your name, child?"

"My name is Alice, so please your Majesty," said Alice very politely; but she added, to herself, "Why, they're only a pack of cards, after all. I needn't be afraid of them!"

"And who are *these?"* said the Queen, pointing to the three gardeners who were lying round the rose-tree; for, you see, as they were lying on their faces, and the pattern on their backs was the same as the rest of the pack, she could not tell whether they were gardeners, or soldiers, or courtiers, or three of her own children.

"How should I know?" said Alice, surprised at her own courage. "It's no business of *mine."*

The Queen turned crimson with fury, and, after glaring at her for a moment like a wild beast, screamed, "Off with her head! Off -- -"

"Nonsense!" said Alice, very loudly and decidedly, and the Queen was silent.

The King laid his hand upon her arm, and timidly said, "Consider, my dear: she is only a child!"



The Queen turned angrily away from him, and said to the Knave, "Turn them over!" The Knave did so, very carefully, with one foot.

"Get up!" said the Queen, in a shrill, loud voice, and the three gardeners instantly jumped up, and began bowing to the King, the Queen, the royal children, and everybody else.

"Leave off that!" screamed the Queen. "You make me giddy." And then, turning to the rosetree, she went on, "What *have* you been doing here ?"

"May it please your Majesty," said Two, in a very humble tone, going down on one knee as he spoke, "we were trying -- -"

"I see!" said the Queen, who had meanwhile been examining the roses. "Off with their heads!" and the procession moved on, three of the soldiers remaining behind to execute the unfortunate gardeners, who ran to Alice for protection.

"You shan't be beheaded!" said Alice, and she put them into a large flower-pot that stood near. The three soldiers wandered about for a minute or two, looking for them, and then quietly marched off after the others.

"Are their heads off?" shouted the Queen.

"Their heads are gone, if it please your Majesty!" the soldiers shouted in reply.

"That's right!" shouted the Queen. "Can you play croquet?"

...

[Alice] was looking about for some way of escape, and wondering whether she could get away without being seen, when she noticed a curious appearance in the air: it puzzled her very much at first, but, after watching it a minute or two, she made it out to be a grin, and she said to herself, "It's the Cheshire Cat: now I shall have somebody to talk to.

"How are you getting on?" said the Cat, as soon as there was mouth enough for it to speak with. Alice waited till the eyes appeared, and then nodded. ... "I don't think they play at all fairly," Alice began, in rather a complaining tone, "and they all quarrel so dreadfully one can't hear oneself speak and they don't seem to have any rules in particular; at least, if there are, nobody attends to them -- and you've no idea how confusing it is all the things being alive; for instance, there's the arch I've got to go through next walking about at the other end of the ground -- and I should have croqueted the Queen's hedgehog just now, only it ran away when it saw mine coming!"

"How do you like the Queen?" said the Cat in a low voice.

"Not at all," said Alice: "she's so extremely -- -" Just then she noticed that the Queen was close behind her listening: so she went on, " -- likely to win that it's hardly worth while finishing the game."

The Queen smiled and passed on.

"Who *are* you talking to?" said the King, coming up to Alice, and looking at the Cat's head with great curiosity.

"It's a friend of mine -- a Cheshire Cat," said Alice: "allow me to introduce it."

"I don't like the look of it at all," said the King: "however, it may hiss my hand if it likes."

"I'd rather not," the Cat remarked.

"Don't be impertinent," said the King, "and don't look at me like that!" He got behind Alice as he spoke.

"A cat may look at a king," said Alice. "I've read that in some book, but I don't remember where."

"Well, it must be removed," said the King very decidedly, and he called the Queen, who was passing at the moment, "My dear! I wish you would have this cat removed!"

The Queen had only one way of settling all difficulties, great or small. "Of with his head!" she said, without looking round.

"I'll fetch the executioner myself," said the King eagerly, and he hurried off.

...

When [Alice] got back to the Cheshire Cat, she was surprised to find quite a large crowd collected around it: there was a dispute going on between the executioner, the King, and the Queen, who were all talking at once, while all the rest were quite silent, and looked very uncomfortable.



The moment Alice appeared, she was appealed to by all three to settle the question, and they repeated their arguments to her, though, as they all spoke at once, she found it very hard to make out exactly what they said.

The executioner's argument was, that you couldn't cut off a head unless there was a body to cut it off from: that he had never had to do such a thing before, and he wasn't going to begin at his time of life.

The King's argument was, that anything that had head could be beheaded, and that you weren't to talk nonsense.

The Queen's argument was, that if something wasn't done about it in less than no time, she'd have everybody executed, all round. (It was this last remark that had made the whole party look so grave and anxious.)

Alice could think of nothing else to say but "It belongs to the Duchess : you'd better ask *her* about it."

"She's in prison," the Queen said to the executioner: "fetch her here." And the executioner went off like an arrow.

The Cat's head began fading away the moment he was gone, and, by the time he had come back with the Duchess, it had entirely disappeared; so the King and the executioner ran wildly up and down looking for it, while the rest of the party went back to the game.

[Later in the book, there is a trial regarding the theft of tarts. Alice is a witness.]

"Let the jury consider their verdict," the King said, for about the twentieth time that day.

"No, no!" said the Queen. "Sentence first -- verdict afterwards."

"Stuff and nonsense!" said Alice loudly. "The idea of having the sentence first!"

"Hold your tongue!" said the Queen, turning purple.

"I won't!" said Alice.

"Off with her head!" the Queen shouted at the top of her voice. Nobody moved.

"Who cares for you?" said Alice (she had grown to her full size by this time). "You're nothing but a pack of cards!"

At this the whole pack rose up into the air, and came flying down upon her: she gave a little scream, half of fright and half of anger, and tried to beat them off, and found herself lying on the bank, with her head in the lap of her sister, who was gently brushing away some dead leaves that had fluttered down from the trees upon her face.

"Wake up, Alice dear!" said her sister. "Why, what a long sleep you've had!"

"Oh, I've had such a curious dream!" said Alice, and she told her sister, as well as she could remember them, all these strange Adventures of hers that you have just been reading about; and when she had finished, her sister kissed her, and said, "It *was* a curious dream, dear, certainly; but now run in to your tea: it's getting late." So Alice got up and ran off, thinking while she ran, as well she might, what a wonderful dream it had been.